IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 461 OF 2001

The Commissioner of Income Tax,
Central-II, Mumbai .. Appellant

v/s.

M/s. Premier Automobiles Ltd. .. Respondent

Mr.K.R.Chaudhary with Ms.S.V.Bharucha i/by Mr. H.D.Rathod for appellant.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 13th August, 2004

P.C.

Heard Mr. K.R.Chaudhary, the learned counsel for the revenue.

2. The Tribunal considered the controversy in question thus-

> "10. In this appeals, the Department is aggrieved against the cancellation of penalty of Rs.21,81,962/- levied u/s.273(2)(a) of the Act. In this year, total income was assessed at Rs.4,15,79,240/- against returned income of Rs.1,45,51,780/-. Assessee had filed statement of advance tax in Form No.28A on 14.6.83 showing nil income. Estimate of advance tax in Form No.28 was filed on 13.12.83 showing income of Rs.1,48,35,020/-. Assessee paid advance tax of Rs.82,65,755/- on 14.12.83. since the AO found the estimate filed by the assessee to be untrue, penalty proceedings u/s.273(2)(a) were initiated. In response to the show cause notice, various reasons for the variation between returned income and assessed income were brought to the notice of the AO. However, the same did not find favour with the AO and according to him, the estimate of advance tax filed was not correct and true. Accordingly, the impugned penalty was levied.

11. CIT(A) cancelled the penalty by relying on the decision of Bombay High Court in the case of Patel Aluminium Co. in 165 ITR 99. He held that assessee had no obligation to file a statement of advance tax and consequently, it had also no obligation to file a revised estimate u/s.209A(4) of the Act. On merits also, CITE held that the estimate filed by the assessee cannot be considered to be untrue.

12. We have considered the rival contentions and material on record. Admittedly, upto 15.6.83, the question of paying any advance tax did not arise and hence, on 14.6.83 statement shown nil advance tax was filed. On 13.12.83, assessee filed an estimate of advance tax showing income of Rs.1,48,35,020/-. According to the AO, the position had changed on 23.7.83 when assessee filed its return of income for A.Y. 1983-84 showing income of Rs.6,45,64,810/-. Hence, according to the AO assessee should have filed correct estimate of advance tax in December, 1983. We do not see much logic in what the AO feels. The income was assessed at higher figure mostly on account of big amounts having disallowed by the AO, which the assessee did not anticipate. Moreover, it was for the first time after a lapse of many years that assessee had become liable to pay advance tax and it is quite possible that some errors might have crept in. Considering all these facts, we are of the view that CIT(A) was justified in cancelling the penalty and hence, uphold his order."

3. The consideration of the matter by the Tribunal cannot be said to suffer from any error of law. No substantial question of law arises. Appeal is dismissed.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)